

REMARKS/ARGUMENTS

The claim amendments moot all the rejections in this case. Claims 1-11 and 15-18 were rejected under 35 U.S.C. 102(e) over U.S. Patent No. 6,285,856 to *Aguayo*, and claim 28 was rejected under 35 U.S.C. 103(a) over the same reference. In addition, claims 19 and 29-39 were rejected under 35 U.S.C. 103(a) over *Aguayo* in view of the Background of the Invention. The claim amendments make these rejections moot by specifying types of test signals that are neither described nor suggested by *Aguayo*.

Claims 1, 7 and 15 are amended to specify that the test signal provided to the user drop is a video test signal, and claim 6 is amended to specify that the test signal is a data test signal. Support for the amendments can be found (among other places) in the specification, page 3, lines 13–25. In contrast, the signals described in *Aguayo* are polling signals that do not provide video or data content for signal quality tests at the user drop.

A. *Aguayo* Does Not Suggest Video Or Data Test Signals

The rejections of the claims over *Aguayo* alone must fail if the reference didn't describe or suggest every element of the claims. The amendments to the independent claims make clear that the test signal provided to the user drop is either a video test signal (claims 1, 7 and 15) or a data test signal (claim 6). In *Aguayo*, the signals transmitted by the central transmitting/receiving unit were polling signals (see column 5, lines 35–40). If *Aguayo*'s polling signals are not the same as video or data test signals, then the rejections of claims should be withdrawn.

In *Aguayo*, the polling signals were used to check the operational status of a unit on a communications system (see column 6, lines 1–4). A central transmitting/receiving unit on the system transmitted a polling signal with a command for a specific user unit to report back its operational status in a response signal (see column 6, lines 14–22). Sometimes the polling signal also included a command to have the unit execute an internal signal strength test and report the

test results (see column 7, lines 1–8). But, the polling signals only contained commands for the user unit to do something. They did not contain video or data information that the user unit used in performance tests.

In contrast, the video and data test signals in the present invention contain information used in testing the performance capability of a user drop (*see* specification, page 3, lines 7–12). Video test signals test video signal quality at the user drop, and data test signals test data transfer, error and loss conditions at the drop (*see* specification, page 3, lines 20–25). The video and data test signals contain test content that is compared to the content actually received at the user drop (*see* specification, page 6, lines 21–28). *Aguayo* did not describe or suggest sending a signal with video or data test content to evaluate performance at the user unit.

Thus, the amendments specifying that the test signals are video or data test signals make moot the rejections of the claims under § 102(e) and § 103(a) over *Aguayo*. The remaining rejection of claims 19 and 29–39 under § 103(a) over *Aguayo* in view of the Background of the Invention is also made moot. The Background does not describe sending video and data test signals to a user drop but, instead, notes that “a suitable test arrangement has yet to be developed which would allow each drop to be tested without actual provisioning of video/data service to the customer location” (*see* specification, page 2, lines 25–27). Accordingly, withdrawal of all of the claim rejections is respectfully requested.

B. The Claim Amendments Do Not Require An Additional Search

A claim amendment after final should be entered if: (1) the amendment places the case in condition for allowance; or (2) it does not require a further search (MPEP § 714.13). This amendment does both. It places the case in condition for allowance by mooted the claim rejections over *Aguayo*. Furthermore, because the video and data test signal elements were already present in the dependent claims, a new search for the amended claims should not be necessary. Thus, the claim amendments should be entered, and the case be placed in condition for allowance.

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Amendment dated November 7, 2005
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 2614

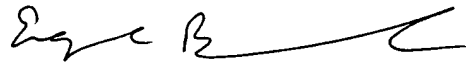
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C. Conclusion

In view of the foregoing, Applicants believe claims 1-3, 5-7, 9-11, 15-19 and 28-39, which are pending in the application, are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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